

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NICHOLAS WILLIAM SINCAGLIA, SYLVAIN PIERRE REBAUD,
JAMES PATRICK LESTER, ERIC WAYNE HANSEN,
DAVID G. LAMPTON, AND TIMOTHY R. BRATTON

Appeal 2007-0244
Application 09/777,500
Technology Center 2100

Decided: March 21, 2007

Before JOSEPH L. DIXON, ALLEN R. MACDONALD, and JEAN R.
HOMERE, *Administrative Patent Judges*.
DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 9-15, 18, 20-21, 23, 33-38, and 45-50. Claims 1, 2, 24-32, 39-44, and 51-57 have been withdrawn from consideration. Claims 3, 4, 6-8, 16, 17, 19, and 22 have been canceled.

We AFFIRM.

BACKGROUND

Appellants' invention relates to a system for distributed media network and meta data server. An understanding of the invention can be derived from a reading of exemplary claim 9, which is reproduced below.

9. A method for servicing media data requests in a meta data server, the method comprising:

receiving a media data request from a client, the request received by a meta data server;

retrieving meta data associated with the media data request from a meta data database, the meta data identifying a media data server having the requested media data, the media data server being separate and independently operated from the meta data server, including without continuous observation by, and communication with the meta data server; and

transmitting the meta data to the client for use by the client to locate the media data server to retrieve the media data.

PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

| | | |
|-------|--------------|---------------|
| Wiser | 6,385,596 B1 | May 7, 2002 |
| Lida | 6,209,787 B1 | Apr. 3, 2001 |
| Chen | 6,412,004 B1 | Jun. 25, 2002 |
| Jones | 6,453,355 B1 | Sep. 17, 2002 |
| Hazra | 6,510,553 B1 | Jan. 21, 2003 |

REJECTIONS

Claims 9, 33, and 45 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Jones.

Claims 10, 11, 12, 13, 14, 15, 23, 35, 36, 37, 38, 47, 48, 49 and 50 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Jones and further in view of Hazra

Claims 18, 21, 34 and 46 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Jones and further in view Wiser.

Claim 20 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Jones and further in view of Iida.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejection, we make reference to the Examiner's Answer (mailed Oct. 23, 2006) for the reasoning in support of the rejections, and to Appellants' Brief (filed Mar. 16, 2006) and Reply Brief (filed Aug. 7, 2006) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellants' Specification and claims, to the applied prior art references, and to the respective positions articulated by Appellants and the Examiner. As a consequence of our review, we make the determinations that follow.

We note that Appellants main contentions are based in the phraseology which the Examiner has used in the text of the rejection. Rather than get lost in the Examiner's terminology in the rejection, we look to what the Examiner relies upon in the teachings of Chen and Jones, individually and collectively, and the express claim language in dispute.

We note that the Examiner has withdrawn the objection to the Specification as not providing antecedent basis for the claimed subject matter in the Examiner's Answer at page 3, but we note that Appellants have not identified any express definition for these broad claim limitations which appear to be supported generally from the Specification. Therefore, we give these terms their ordinary and customary meanings.

Appellants argue that Chen teaches tightly coupled meta data servers and media servers including continuous monitoring of the media servers by the meta servers (Br. 3 and Reply Br. at 4-5). The Examiner maintains that the portion of Chen cited by Appellants is different from those teachings set forth in the rejection by the Examiner (Answer 4, 13, and 14). We agree with the Examiner and find that Chen discloses a range of embodiments and Appellants specifically argues different embodiments from those relied upon

by the Examiner. Therefore, Appellants' argument is not persuasive since the argument does not address the merits of the rejection.

From our review of the teachings of Chen, we find that Chen teaches geographic separation and independence from the meta data server and periodic communication between the servers which we find to be non-continuous. Therefore, Chen teaches “the media data server being separate and independently operated from the meta data server, including without continuous observation by, and communication with the meta data server” contrary to Appellants main argument in the Brief. Therefore, we find that Appellants have not shown error in the Examiner’s prima facie case of obviousness, and we will sustain the rejection of independent claims 8, 33, and 45.

In addition, we find that Appellants rely upon the base arguments with respect to independent claim 9 for each of their other groupings. Since we did not find these arguments persuasive with respect to claim 9, we similarly do not find them persuasive with respect to representative claims 10, 18 and 20, and we will sustain the rejection of all the dependent claims.

A review of Appellants’ Reply Brief shows that Appellants reiterate the arguments of the Brief and now controvert the teachings of Jones, which were relied upon by the Examiner in the Final Rejection and the Examiner’s Answer, and which were not argued in the Principal Brief. Since we find that the Examiner merely reiterates the rejection from the Final Rejection, we find that Appellants’ arguments in the Reply Brief are not timely presented, and we have no response from the Examiner concerning the

Examiner's position that Chen does not teach identifying the media server(s). Appellants argue that Appellants cannot find the teachings upon which the Examiner relies upon in the rejection with respect to Jones (Reply Br. 5).

With this posture of the case, rather than remand the case, we opt to disagree with the Examiner's position that Chen does not identify the media server(s), and we make the finding that Chen teaches and fairly suggests that the meta data server identifies the media server(s) and transmits this to the client at least in Figure 9. Additionally, we find it difficult to imagine the use of the Internet and ISP's in Jones and not have at least some identification of each of the locations of the client servers and the web servers in Figure 6 of Jones. Therefore, we find some implicit transmission in Jones of "meta data to the client for use by the client to locate the media data server to retrieve the media data" since the client computer systems may provide media files to other client computer systems or to and from the web server. (Jones, col. 14.) Therefore, we do not agree with Appellants' argument of a lack of teaching, and we find that all of the elements of the claimed invention are in the combination of Chen and Jones.

Appellants additionally challenge the Examiner's combination of the two teachings at pages 5-7 of the Reply Brief. We do not find that Appellants reiteration of the Examiner's statements and a laundry listing of case citations and quotations to rise to the level of a specific argument for patentability. We do not find that Appellants have identified why it would not have been obvious to one skilled in the art at the time of the invention to have combined the teachings of Chen and Jones. Therefore, Appellants'

argument is not persuasive, and we will sustain the rejection of claims 9, 33, and 45.

With respect to dependent claim 10, the Examiner additionally argues in the Reply Brief at pages 7-8 that compressed data would not be transmitted more quickly and in many cases would be transmitted more slowly. We find no support for Appellants' assertion and do not find the unsupported argument persuasive.

Appellants additionally argue that the dependent claims grouped with claim 10 incorporate additional limitations not taught by claims 9, 33, or 45 or by the cited references (Reply Br. 8). We find no relevance of a comparison of dependent claims to the independent claims with respect to a comparison of the prior art. Therefore, Appellants' argument is not persuasive.

Appellants argue that Appellants have been unable to locate that the meta data contains the address of the media server and designating the media servers as primary and secondary based upon communication network criteria (Reply Br. 8). We find communications would implicitly involve addresses, as discussed above with Chen and Jones, and additionally find that Hazra would have addressed primary and secondary sources, discussed in column 5. Additionally Chen discloses reduction of bottlenecks, designation of at least one media server, and coordination of media server (Chen, col. 1-2). Therefore, Appellants' argument is not persuasive, and we will sustain the rejection of claim 10 and those grouped therewith.

With respect to dependent claims 23, 35, and 47, Appellants elected to group these claims with dependent claim 10 in the Brief and now appear to present separate argument. We group these claims as Appellants previously elected in the principal Brief and these arguments is deemed waived. (See 37 C.F.R. § 41.37 (c)(1)(vii)).

Appellants additionally argue that the dependent claims grouped with claim 18 incorporate additional limitations not taught by claims 9, 33, or 45 or by the cited references (Reply Br. 9). We find no relevance of a comparison of dependent claims to the independent claims with respect to a comparison of the prior art. Therefore, Appellants' argument is not persuasive.

Appellants argue that Appellants have been unable to locate any request for decryption key from a meta data database (Reply Br. 9). We find that Wiser discloses the key is transmitted in encrypted form to the client with the content. Therefore we agree with Appellants that Wiser does not expressly teach the request and transmission of the decryption key. But we do find it implicit in this teaching of direct transmission of the key with the content. We find that it would have been obvious to one of ordinary skill in the relevant art at the time of the invention to be an obvious prior art variation of request and reply for the decryption key. We find that it would have been obvious to one skilled in the art at the time of the invention to use this slower yet more secure method if higher security and separation of the decryption key and content were desired. Appellants' argument is not persuasive, and we will sustain the rejection of claim 18 and those grouped therewith.

With respect to dependent claim 21, Appellants elected to group these claims with dependent claim 18 in the Brief and now appear to present separate argument. We group these claims as Appellants previously elected in the principal Brief and these arguments is deemed waived. (See 37 C.F.R. § 41.37 (c)(1)(vii)).

With respect to dependent claim 20, Appellants rely upon the arguments made with respect to independent claim 9 which we did not find persuasive. Therefore, Appellants' argument is not persuasive. Appellants additionally find fault in the Examiner's recitation of Wiser rather than Jones in the combination and motivation statement at page 12 of the Examiner's Answer. We find this to be a minor typographical error that has existed since the Non-Final Rejection, dated Dec. 8, 2003, when the Examiner replaced Wiser with Jones in the rejection of claim 20. We find it late in this prosecution to label this as a serious deficiency which has not been previous addressed. We find no specific argument for patentability in this asserted deficiency. Therefore, Appellants' argument is not persuasive, and we will sustain the rejection of claim 20.

CONCLUSION

To summarize, we have sustained the rejection of claims 9-15, 18, 20-21, 23, 33-38, and 45-50 under 35 U.S.C. § 103(a).

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

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